

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

-against-

SUNEET SINGAL, FIRST CAPITAL REAL
ESTATE TRUST INC., FIRST CAPITAL REAL
ESTATE ADVISORS, LP, and FIRST CAPITAL
REAL ESTATE INVESTMENTS, LLC,

Defendants.
-----X

Case No.19-cv-11452 (PGG)

**ANSWER AND DEFENSES
OF DEFENDANTS
SUNEET SINGAL, FIRST
CAPITAL REAL ESTATE
TRUST INC., FIRST CAPITAL
REAL ESTATE ADVISORS, LP,
& FIRST CAPITAL REAL
ESTATE INVESTMENTS, LLC**

Defendants Suneet Singal (“Singal”), First Capital Real Estate Trust Inc. (“FC REIT”),
First Capital Real Estate Advisors, LP (“FC REIT Advisor”), and First Capital Real Estate
Investments, LLC (“FC Private,” and together with Singal, FC REIT and FC REIT Advisor,
“Defendants”), by and through their attorneys as and for their Answer and Affirmative Defenses,
state as follows:¹

SUMMARY

1. This paragraph contains a summary of plaintiff Securities and Exchange
Commission’s (“Plaintiff” or the “Commission”) case as to which no response is required. To the
extent it contains any allegations as to which a response is required, those allegations are denied.

2. This paragraph contains a summary of the Plaintiff’s case as to which no response
is required. To the extent it contains any allegations as to which a response is required, those
allegations are denied.

¹ For ease of reference, Defendants have included the section headings and defined terms used in the Complaint. To the extent that the allegations contained in a section heading may be deemed to require a response, they are denied.

3. This paragraph contains a summary of the Plaintiff's case as to which no response is required. To the extent it contains any allegations as to which a response is required, those allegations are denied.

4. This paragraph contains a summary of the Plaintiff's case as to which no response is required. To the extent it contains any allegations as to which a response is required, those allegations are denied.

5. This paragraph contains a summary of the Plaintiff's case as to which no response is required and this paragraph states legal conclusions as to which no response is required. To the extent it contains any allegations as to which a response is required, those allegations are denied.

6. Defendants admit that the Commission, in bringing this action against them, is requesting the relief set forth in this paragraph. To the extent this paragraph contains any remaining allegations as to which a response is required, those allegations are denied.

JURISDICTION AND VENUE

7. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

8. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

9. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

DEFENDANTS AND RELEVANT ENTITIES

I. Defendants

10. Defendants admit that Singal was 41 years of age when the Complaint was filed and that he resides in El Dorado Hills, California. Defendants also admit that Singal was the CEO and chairman of FC REIT's board of directors when the Complaint was filed. Defendants also admit that Singal is the beneficial owner and CEO of FC REIT Advisor. FC REIT lacks sufficient information or knowledge to form a belief as to the truth of the remaining allegations in this paragraph. The other defendants admit the remaining allegations in this paragraph.

11. Defendants admit that FC REIT is a public, non-traded REIT incorporated with its principal office located in New York, New York. The remaining allegations contained in this paragraph contain general descriptions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

12. Defendants admit that FC REIT has no employees and that FC REIT does not have a class of securities registered under Section 12(b) of the Exchange Act. Defendants admit that FC REIT offered and sold securities during certain periods, but deny the entirety of the timeframe as alleged in this paragraph. The remaining allegations of this paragraph state legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

13. Defendants deny that OP Units were issued directly to Singal. Defendants admit the remaining allegations in this paragraph.

14. Defendants admit the allegations in this paragraph.

15. Defendants admit that FC Private is a single member California limited liability company, founded by Singal in 2008 and that Singal is the CEO, founding principal, sole member and sole manager of FC Private. The remaining allegations contained in this paragraph are vague and ambiguous and thus Defendants cannot determine their veracity. To the extent a response is required, the allegations are denied.

II. Relevant Entities

16. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private admit that Singal served as: (i) a member of the BDC's board of directors from March 30, 2017 to March 13, 2018, (ii) chairman from March 30, 2017 to September 12, 2017, (iii) the acting CFO from June 21, 2017 to March 13, 2018, and (iv) the BDC's acting CEO from September 12, 2017 to March 13, 2018. Singal and FC Private admit that the BDC offered and sold securities during certain periods, but deny the entirety of the timeframe as alleged in this paragraph. Singal and FC Private deny the remaining allegations in this paragraph.

17. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private admit that the BDC Advisor had no employees and was an unregistered private advisory firm that served as the external investment adviser to the BDC pursuant to a written investment advisory agreement. Singal and FC Private also admit that, through FC Private, Singal acquired a 24.9% ownership interest in the parent company that owned the BDC Advisor on or about October 12, 2016, with an option to acquire a controlling interest at a later date and that Singal, through FC Private, acquired the remaining ownership interest in the parent company that owned the BDC Advisor

on or about April 3, 2017. Singal and FC Private deny the remaining allegations in this paragraph.

18. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private admit that Singal was a member of the BDC Advisor's three-person investment committee and that the BDC Advisor was compensated under the terms of the advisory agreement for its services through a base asset management fee and an incentive fee based on performance. Singal and FC Private also Admit that Singal sold the BDC Advisor to an unrelated third party on or about March 13, 2018. As to the allegation that the BDC paid the BDC Advisor more than \$28,000 in management fees for its services in 2017, Singal and FC private lack sufficient information or knowledge to form a belief as to the truth of this allegation. Singal and FC Private deny the remaining allegations in this paragraph.

19. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that Defendants correctly understand the reference to Company A in the Complaint, Singal and FC Private admit that Company A is a Nevada limited liability company headquartered in California that owned and operated franchised fast food locations. Singal and FC Private also admit that Singal, through FC Private, owned 100% of the membership interests in Company A until February 23, 2017, and that on February 23, 2017 Singal, through FC Private, sold 100% of the membership interests to a person who had a role in managing the day-to-day operations of the business in exchange for an \$11.5 million promissory note to FC Private. Singal and FC Private also admit that Company A filed for bankruptcy on September 14, 2017. Singal and FC Private deny the remaining allegations in this paragraph.

20. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that Defendants correctly understand the reference to Company B in the Complaint, and to the extent the sale referred to in this paragraph is the same sale referenced in the prior paragraph, Singal and FC Private admit that Company B is a Nevada limited liability company that provided human resources and operations services to FC Private and its subsidiaries, including Company A - both before and after the sale. Singal and FC Private also admit that Singal (through FC Private) owned a 50% interest in Company B. Singal and FC Private also admit that FC Private (which was controlled by Singal) was a, though not the sole, managing member of Company B. Singal and FC Private also admit that at certain points in time an employee of Company B performed cash management and accounting functions for both Company A and FC Private. Singal and FC Private also admit that Company B has been dissolved. Singal and FC Private deny the remaining allegations in this paragraph.

FACTS

I. Fraudulent Conduct Relating to FC REIT

A. Singal Fraudulently Purported to Contribute Certain Hotels that He Did Not Own to FC REIT as Part of his Purchase of FC REIT Advisor

- 21. Defendants deny the allegations in this paragraph.
- 22. Defendants deny the allegations in this paragraph.
- 23. Defendants deny the allegations in this paragraph.
- 24. Defendants deny the allegations in this paragraph.
- 25. Defendants deny the allegations in this paragraph.
- 26. Defendants deny the allegations in this paragraph.
- 27. Defendants deny the allegations in this paragraph.

28. Defendants deny the allegations in this paragraph.

B. The Day After He Purported to Contribute the Hotels to FC REIT, Singal Signed a Side Letter Agreement Detailing Necessary Steps for His Private Company to Actually Acquire the Hotels

29. Defendants deny the allegations in this paragraph.

30. Defendants deny the allegations in this paragraph.

31. To the extent that this paragraph refers to a document, the document speaks for itself. Defendants deny the remaining allegations in this paragraph.

32. To the extent that this paragraph refers to a document, the document speaks for itself. Defendants deny the remaining allegations in this paragraph.

33. To the extent that this paragraph refers to a document, the document speaks for itself. Defendants deny the remaining allegations in this paragraph.

34. Defendants deny the allegations in this paragraph.

35. Defendants deny the allegations in this paragraph.

36. Defendants deny the allegations in this paragraph.

37. To the extent that this paragraph refers to documents, the documents speak for themselves. Defendants deny the remaining allegations in this paragraph.

C. Singal and FC REIT Made Material Misrepresentations and Omissions in FC REIT's Form 8-K Filed on September 21, 2015, and the Amended Form 8-K Filed on September 24, 2015

38. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

39. Defendants deny the allegations in this paragraph.

40. Defendants deny the allegations in this paragraph.

41. Defendants deny the allegations in this paragraph.

42. Defendants deny the allegations in this paragraph.

43. To the extent that this paragraph refers to documents, the documents speak for themselves. Defendants deny the remaining allegations in this paragraph.

44. To the extent that this paragraph refers to a document, the document speaks for itself. Defendants deny the remaining allegations in this paragraph.

45. Defendants deny the allegations in this paragraph.

46. Defendants deny the allegations in this paragraph.

D. Singal Continued His Efforts to Acquire the Hotels

47. Defendants deny the allegations in this paragraph.

48. To the extent that this paragraph refers to a document, the document speaks for itself. Defendants deny the remaining allegations in this paragraph.

49. To the extent that this paragraph refers to a document, the document speaks for itself. Defendants deny the remaining allegations in this paragraph.

50. To the extent that this paragraph refers to documents, the documents speak for themselves. Defendants deny the remaining allegations in this paragraph.

51. To the extent that this paragraph refers to a document, the document speaks for itself. Defendants deny the remaining allegations in this paragraph.

E. Singal Abandoned His Efforts to Acquire the Hotels for FC REIT in December 2015

52. Defendants lack sufficient information or knowledge to form a belief as to the truth of the allegations concerning what the former owner of FC REIT Advisor knew or felt. Defendants deny the remaining allegations in this paragraph.

53. Defendants lack sufficient information or knowledge to form a belief as to the truth of the allegations concerning what the former owner of FC REIT Advisor knew, discussed with counsel, or concluded. Defendants deny the remaining allegations in this paragraph.

54. To the extent that this paragraph refers to a document, the document speaks for itself. Defendants deny the remaining allegations in this paragraph.

55. To the extent that this paragraph refers to a document, the document speaks for itself. Defendants deny the remaining allegations in this paragraph.

56. Defendants deny the allegations in this paragraph.

57. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

F. Singal and FC REIT Made Material Misrepresentations and Omissions in FC REIT's January 7, 2016 and February 8, 2016 Forms 8-K

58. To the extent that this paragraph refers to a document, the document speaks for itself. Defendants deny the remaining allegations in this paragraph.

59. Defendants deny the allegations in this paragraph.

60. Defendants deny the allegations in this paragraph.

61. Defendants deny the allegations in this paragraph.

62. Defendants deny the allegations in this paragraph.

63. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

64. Defendants deny the allegations in this paragraph.

G. Singal and FC REIT Made Material Misrepresentations and Omissions in FC REIT's January 7, 2016 and February 8, 2016 Forms 8-K

65. Defendants admit the allegations in this paragraph.

66. Defendants lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph.

67. Defendants deny the allegations in this paragraph.

68. To the extent that this paragraph refers to documents, the documents speak for themselves. Defendants deny the remaining allegations in this paragraph.

69. Defendants deny the allegations in this paragraph.

70. Defendants deny the allegations in this paragraph.

71. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

72. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

73. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

H. FC REIT Failed to File Quarterly and Annual Reports with the SEC

74. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

75. Defendants admit that as of the date of the filing of the Complaint, FC REIT has not filed a Form 10-Q since its quarterly report for the quarter ended June 30, 2015 and has not filed a Form 10-K since its annual report for the fiscal year ended December 31, 2014. The remaining allegations in this paragraph state legal conclusions as to which no response is required. To the extent that a response is required, those allegations are denied.

II. Fraudulent Conduct Relating to the BDC

A. Starting in 2016, Singal Acquired an Interest in the BDC Advisor, Joined the Investment Committee, and Sought to Have the BDC Invest in Businesses He Owned

76. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

77. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

78. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

79. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private admit that at a certain period in time Singal became a member of the BDC Advisor's investment committee. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

80. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private admit that at a certain period in time Singal became chairman of the BDC's board of directors. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

B. Both the BDC Advisor and Singal Were Investment Advisers and Both Owed a Fiduciary Duty to the BDC

81. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private admit that, investment advisers, among other things, "are people or companies who, for compensation, are engaged in the business of providing advice to others or issuing reports or analyses regarding securities." Singal and FC Private deny the remaining allegations in this paragraph.

82. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

83. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

84. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

85. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

86. Defendants lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph.

87. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

88. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

89. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

90. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

91. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

92. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

C. Singal Caused the BDC's First Investment to be a Loan to a Company He Owned Until the Day Before the Loan

93. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

94. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. As to the BDC's conclusions regarding "affiliated transactions," the BDC's conclusions were set forth in writing in communications with the Commission and Singal and FC Private refer the Court to those communications. Singal and FC Private deny the remaining allegations in this paragraph.

95. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. As to the BDC's conclusions regarding "affiliated transactions," the BDC's conclusions were set forth in writing in communications with the Commission and Singal and FC Private refer the Court to those communications. Singal and FC Private deny the remaining allegations in this paragraph.

96. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private admit the allegations in this paragraph.

97. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph

refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

98. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

99. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

D. Despite the Sale, Singal Secretly Maintained Control Over the Management and Policies of Company A

100. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

101. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

102. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private admit that, at certain times, for business reasons including that human resources and other services could be centrally managed, Company B was the entity that formally employed certain employees of several privately held business, including Company A. Singal and FC Private further admit that, through FC Private, Singal owned a 50% interest in Company B and that FC Private was a,

though not the sole, managing member of Company B. Singal and FC Private deny the remaining allegations in this paragraph.

103. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

104. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

105. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

106. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

107. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

108. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

E. Singal Caused the BDC to Make a \$1.5 Million Loan to Company A on February 24, 2017, and then Misappropriated More than Half the Proceeds

109. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

110. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

111. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

112. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that Defendants correctly understand the reference to Company A in the Complaint, Singal and FC Private admit that Company A received \$1.5 million in BDC loan proceeds on February 27, 2017. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

113. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

114. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

115. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

116. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

F. Singal Caused the BDC to Make a Second \$1.5 Million Loan to Company A on March 31, 2017, and Again Misappropriated Loan Proceeds

117. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private admit that Singal became chairman of the BDC's board of directors on March 30, 2017. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

118. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

119. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

120. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that Defendants correctly understand the reference to Company A in the Complaint, Singal and FC Private admit that Company A received \$1.5 million in BDC loan proceeds on March 31, 2017. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

121. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

122. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

123. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

124. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

125. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

126. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

127. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

G. Singal Exercised His Control Over Company A to Fraudulently Obtain Merchant Cash Advances for His Own Benefit

128. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

129. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

130. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

131. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

132. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

133. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that Defendants correctly understand the reference to Company A in the Complaint, Singal and FC Private admit that Singal communicated with the Controller and others in setting up calls and other communications that, among other things, touched on the MCA's and that Singal personally communicated with the lenders' representatives concerning the advances involving Company A post-sale. Singal and FC Private deny the remaining allegations in this paragraph.

134. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

H. Singal Knew, But Did Not Disclose, That Company A Had Dire Cash Flow Problems that Resulted in Company A Filing for Bankruptcy Protection

135. This paragraph states legal conclusions as to which no response is required. To the extent that this paragraph refers to a document, the document speaks for itself. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

136. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

137. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph

refers to documents, the documents speak for themselves. Singal and FC Private deny the remaining allegations in this paragraph.

138. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

139. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to documents, the documents speak for themselves. Singal and FC Private deny the remaining allegations in this paragraph.

140. Defendants lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph.

141. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to documents, the documents speak for themselves. Singal and FC Private deny the remaining allegations in this paragraph.

142. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to documents, the documents speak for themselves. Singal and FC Private deny the remaining allegations in this paragraph.

143. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private admit the allegations in this paragraph.

144. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

145. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

146. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

I. Singal Continued his Fraudulent Scheme Through the Fall of 2017 by Concealing his Knowledge of Company A's Bankruptcy and his Knowledge of Company A's Use of BDC Loan Proceeds

147. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

148. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

149. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

150. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

151. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

152. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

153. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

J. Singal Made Material Misrepresentations and Omissions in the BDC's Registration Statement

154. This paragraph states legal conclusions as to which no response is required. To the extent that this paragraph refers to a document, the document speaks for itself. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

155. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph

refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

156. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to documents, the documents speak for themselves. Singal and FC Private deny the remaining allegations in this paragraph.

157. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

158. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

159. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

160. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph refers to documents, the documents speak for themselves. Singal and FC Private deny the remaining allegations in this paragraph.

161. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

162. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

K. Singal Breached his Fiduciary Duty as an Investment Adviser to the BDC, or, in the Alternative, Aided and Abetted the BDC Advisor's Breach of Fiduciary Duty

163. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

164. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

165. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

166. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

167. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

168. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. To the extent that this paragraph

refers to a document, the document speaks for itself. Singal and FC Private deny the remaining allegations in this paragraph.

169. FC REIT and FC REIT Advisor lack sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph. Singal and FC Private deny the allegations in this paragraph.

170. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT I
Violations of Section 17(a) of the Securities Act
(Singal)

171. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

172. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

173. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT II
Violations of Section 17(a)(2) of the Securities Act
(FC REIT)

174. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

175. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

176. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT III
Violations of Section 10(b) and Rule 10b-5 of the Exchange Act
(Singal)

177. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

178. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

179. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT IV
Violations of Section 10(b) and Rule 10b-5 of the Exchange Act
(FC REIT)

180. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

181. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

182. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT V
Violations of Section 206(1) and Section 206(2) of the Advisers Act
(Singal)

183. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

184. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

185. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

186. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

187. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT VI
Violations of Section 36(a) of the Company Act
(Singal)

188. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

189. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

190. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT VII
Violations of Section 57(a)(3) and 57(a)(4)
of the Company Act and Company Act Rule 17d-1
(Singal)

191. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

192. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

193. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

194. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

195. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT VIII
Violations of Section 15(d) of the Exchange Act
and Exchange Act Rules 15d-1 and 15d-13
(FC REIT)

196. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

197. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

198. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT IX
Aiding and Abetting Violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act
(FC REIT Advisor)

199. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

200. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

201. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT X
Aiding and Abetting Violations of Section 10(b)
and Rule 10b-5(a) and (c) of the Exchange Act
(FC Private)

202. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

203. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

204. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT XI
Aiding and Abetting Violations of Section 17(a)(2) of the Securities Act
(FC REIT Advisor)

205. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

206. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

207. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT XII

**Aiding and Abetting Violations of Section 17(a)(1) and 17(a)(3) of the Securities Act
(FC Private)**

208. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

209. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

210. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT XIII

**Aiding and Abetting Violations of Sections 206(1) and (2) of the Advisers Act
(Singal)**

211. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

212. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

213. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

COUNT XIV
Aiding and Abetting Violations of Section 15(d) of the
Exchange Act and Exchange Act Rules 15d-1 and 15d-13
(FC REIT Advisor)

214. Defendants incorporate by reference herein their responses to each and every allegation contained in the paragraphs above.

215. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

216. This paragraph states legal conclusions as to which no response is required. To the extent that it contains any allegations as to which a response is required, those allegations are denied.

AFFIRMATIVE AND OTHER DEFENSES

Without assuming any burden of proof, persuasion or production not otherwise legally assigned to them, Defendants assert the affirmative and other defenses set forth below.

FIRST DEFENSE

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Complaint is barred in whole or in part by applicable statutes of limitation and by the doctrines of waiver, estoppel, laches, and other equitable defenses.

THIRD DEFENSE

The Complaint is barred because Defendants at all times acted in good faith.

FOURTH DEFENSE

The Complaint is barred in whole or in part as it relates to the allegations concerning FC REIT because no investor in FC REIT suffered any damages.

FIFTH DEFENSE

The promissory notes alleged in paragraphs 110 and 119 of the Complaint to be securities were not securities, and the Commission lacks jurisdiction to bring an enforcement action regarding them.

SIXTH DEFENSE

The Complaint is barred in whole or in part because any actions on the part of Singal, FC Private, and/or Company B after February 23, 2017 regarding “Company A” as alleged in the Complaint were undertaken with knowledge and approval of the “Company A Manager.”

SEVENTH DEFENSE

The Complaint is barred in whole or in part because any actions on the part of Singal, FC Private, and/or Company B after February 23, 2017 regarding “Company A” as alleged in the Complaint were justified by business practice and economic duress concerning all entities involved.

ADDITIONAL AFFIRMATIVE DEFENSES

Defendants hereby give notice that they intend to rely upon such other and further defenses as may become available or apparent during pretrial proceedings in this action and hereby reserve all rights to assert such defenses.

JURY DEMAND

Defendants demand a trial by jury on all claims so triable.

RELIEF REQUESTED

Defendants ask this Court to enter judgment in their favor and against the Commission; dismiss the Complaint with prejudice; and award them the costs of suit, including attorney's fees, and such other relief as the Court deems just and proper.

Dated: New York, New York
February 13, 2020

EISEMAN LEVINE LEHRHAUPT
& KAKOYIANNIS, P.C.

/s/ Eric R. Levine

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